IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HECTOR L. HUERTAS,	:	
	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	NO. 01-4919
PAUL O'NEILL,	:	
DEPARTMENT OF TREASURY,	:	
	:	
Defendant.	:	

MEMORANDUM

Baylson, J. **October 9, 2002**

Hector L. Huertas, a *pro se* plaintiff ("Plaintiff"), filed a Complaint on October 31, 2001 seeking damages arising out of alleged employment discrimination based on national origin (Puerto Rican) and race (Hispanic) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"), by the Philadelphia Internal Revenue Service Center, an agency of the Department of Treasury, the Secretary of which is Paul O'Neill ("Defendant"). Defendant has filed a Motion for Summary Judgment, which will be granted.

I. Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A factual dispute is

"material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party's initial burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). Summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

II. Facts

Plaintiff was employed as a seasonal tax examiner with the Philadelphia Internal Revenue Service ("IRS") Center in February 1998. (Mem. Supp. Mot. Summ. J. at 2.) This was a career conditional appointment and was subject to the satisfactory completion of a one-year probationary period. Id. This appointment was also on a seasonal basis. Id. Plaintiff was furloughed from this position in June 1998 and was hired by the United States Mint as a seasonal employee in July 1998. Id. He was furloughed from that position in January 1999 and was re-

instated by the Philadelphia IRS Center as a seasonal tax examining clerk on May 9, 1999. Id. He was detailed to the Research Branch in July 1999 to assist with filing tax returns. Id. On August 3, 1999, Plaintiff alleges he was wrongfully accused of cursing at Donna Lloyd, a permanent employee of the Philadelphia IRS Center. (Compl. ¶ 3.) Plaintiff alleges that Donna Lloyd was screaming at him and he concedes that he screamed back at her. (Huertas Aff. at 2.)

Plaintiff was ultimately placed on administrative leave from August 4 to August 6, 1999, and was furloughed with other seasonal employees on August 6, 1999. (Mem. Supp. Mot. Summ. J. at 3.) On November 4, 1999, Plaintiff was notified that his employment was terminated during his probationary period for failure to demonstrate acceptable conduct effective November 27, 1999. Id.

III. Discussion

The burden-shifting analysis established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) is the appropriate analysis for summary judgment motions in cases alleging employment discrimination. Holness v. Penn State University, No. CIV.A.98-2484, 1999 U.S. Dist. LEXIS 6240, at *14 (E.D. Pa. May 5, 1999). In order to establish a prima facie case of discrimination, Plaintiff must demonstrate the existence of four elements: (1) Plaintiff is a member of a protected class; (2) Plaintiff was qualified for the position; (3) Plaintiff suffered an adverse employment action; and (4) similarly situated nonmembers of the protected class were treated more favorably than Plaintiff. Oaks v. City of Philadelphia, No. CIV.A.99-2854, 2002 U.S. Dist. LEXIS 12151, at *11 (E.D. Pa. May 1, 2002). The establishment of a prima facie case raises an inference of discrimination because discriminatory acts, if unexplained, "are more likely than not based on the consideration of impermissible factors." McMahon v. Impact Sys., Inc., No. CIV.A. 91-6060, 1992 U.S. Dist. LEXIS 12150, at *7 (E.D. Pa. Aug. 11, 1992) (quoting

Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577, 98 S. Ct. 2943, 57 L. Ed. 2d 957 (1978)).

If Plaintiff establishes a prima facie case, the burden shifts to Defendant to offer a legitimate, non-discriminatory reason for the adverse employment action. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254-56 (1981). Defendant satisfies its burden of production by introducing evidence, which, if taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision. Fuentes v. Perksie, 32 F.3d 759, 763 (3d Cir. 1994). Defendant need not prove that the tendered reason actually motivated its behavior because the ultimate burden of proving intentional discrimination always rests with Plaintiff. Id.

If Defendant is able to come forward with a legitimate, non-discriminatory reason for its action, Plaintiff can defeat a motion for summary judgment by proffering evidence from which a factfinder could reasonably either (1) disbelieve Defendant's articulated legitimate reasons or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of Defendant's action. Id. at 764. To discredit Defendant's proffered reason, Plaintiff cannot simply show that Defendant's decision was wrong or mistaken because the factual dispute at issue is whether discriminatory animus motivated Defendant's . Id. at 765.

Defendant argues that summary judgment should be granted because Plaintiff has not offered, and cannot offer, any evidence to establish that he was terminated under circumstances giving rise to an inference of race or national origin discrimination. (Mem. Supp. Mot. Summ. J. at 5.) Defendant claims that Plaintiff has not presented any evidence to support his allegation that he was terminated because he is Hispanic and Puerto Rican and has not shown more favorable treatment of individuals who are not in his protected class. Id. at 5-6.

Because Defendant has pointed out to the Court that Plaintiff has not offered, and cannot

offer, any evidence to satisfy his burden to establish his prima facie case, Plaintiff is required to set forth specific facts showing that there is a genuine issue for trial. In his Response, Plaintiff asserts that enough evidence has been entered into the record because the "EEOC investigative file contains mountains of evidence which prove discrimination based on National Origin and race." (Mem. Opp'n Mot. Summ. J. at 1.) Plaintiff also alleges that the EEOC investigative file clearly proves that he was treated differently from an individual who was counseled extensively after he fought with other employees before being terminated. Id. Plaintiff further argues that the Notice of Determination from the Office of Special Counsel proves that he did not use profanity when Donna Lloyd was screaming at him and that the evidence proves that his work performance was above average. Id. at 1-2.

Plaintiff's allegations in his Response rely on the EEOC investigative file and the Notice of Determination, which are not a part of the record in this case. In addition, Plaintiff relies on mere allegations and denials and his position is not supported by any pleadings, depositions, answers to interrogatories, admissions on file, or affidavits. Plaintiff, therefore, has failed to set forth specific facts to show that there is a genuine issue of material fact as to whether a prima facie case of national origin or race discrimination was established. Thus, Defendant is entitled to judgment as a matter of law and the Court will grant Defendant's Motion for Summary Judgment.

IV. Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment will be granted.

An appropriate Order follows.

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	:	NO. 01-4919
PAUL O'NEILL,	:	
DEPARTMENT OF TREASURY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 9th day of October, 2002, it is hereby ORDERED that Defendant's Motion for Summary Judgment is GRANTED, and Judgment is granted in favor of Defendant and against Plaintiff.

BY THE COURT:

_____

MICHAEL M. BAYLSON, U.S.D.J.

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